

OCT 31 2005

ATTORNEY DOCKET NO.: ECDC-US
CUSTOMER NO: 36038

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Examiner: P. Ponnaluri

Commissioner for Patents
PO Box 1450
Alexandria VA 22313-1450

Motion for an Interim Order that the Examiner Comply with MPEP Section 1208(A)10, subparts (c) and (e), and Compare “Feature by Feature” at Least One Claim on Appeal with the Cited Art

Dear Sir,

The Examiner in this matter, Ms. Ponnaluri, has over a two year period engaged in a series of misrepresentations, inactions and/or deliberate gaming of the system in the PTO, in an attempt to prevent this matter from being reviewed on appeal.

In one of the more recent examples of this conduct (as noted in a paper filed by the undersigned on 12/14/2004, entitled "Request for Status Update") the Examiner indicated to the Undersigned that she was not aware why on 9/15/2004 – after this matter had been docketed for appeal on 7/16/2004 – it had been taken off the docket and returned to the Examiner. The Examiner also stated at that time that she did not know where the file was, and that it could not be returned to the Board for review as it could not be located (all as noted in the paper filed on 12/14/2004). It is clear from the Office Action of 1/26/2005, that the Examiner had previously indicated to the Board that a Supplemental Examiner's Answer had been filed – when that was not so – and for that reason the matter was returned to her from the Board. It has also come to the Undersigned's attention since filing the Request for Status Update on 12/14/2004, that the Board does not, and did not require, a "file" in order to docket a matter for appeal. The Examiner's statements to the Undersigned that it could not be docketed without "finding the file" were false, designed to keep the Undersigned from vigorously pursuing the status of the matter, and thereby keeping this matter from the Board's review. .

The Undersigned was subsequently assured, after additional messages and phone calls to the Examiner and to her supervisor, Mr. Andrew Wang, that the file was "found" and the matter had been properly returned to the Board and would proceed to appeal. Next, on 2/18/2005, the Undersigned received an Action in which it was noted that an IDS had not been entered. The Undersigned immediately called the Examiner's supervisor, Andrew Wang, to determine if the matter was, in fact, before the Board, and was told it had been "taken back" again from the Board because the Undersigned had filed an IDS in 2005. The implication was that this conduct by the Undersigned had further delayed the review of the matter. However, although the Undersigned did not realize it at that time, it is now clear that at that time of Mr. Wang's statements, the matter had never been delivered and docketed by the Board (no docket number had been assigned between 12/14/2004 and 2/18/2005).

After several messages more and a follow-up telephone call with Examiner Ponnaluri, Applicant was assured that the matter was properly before the Board at last. But, after a conversation with Chief Judge Michael Fleming at a Seminar at the 2005 AIPLA conference, it became apparent that this matter has still as of this date not been "returned to the Board." This matter has not been assigned an appeal docket number.

The Examiner's embarrassment and reluctance to have this matter reviewed is understandable - though her actions are not excusable. As noted in Applicants' petition of 4/26/2004 and in the Reply Brief, the Examiner failed to comply with the MPEP Section 1207.02 A (9), subparts (c) and (e), which require, *inter alia*, a "feature by feature comparison" of at least one of the rejected claims with the prior art. The independent claim on appeal in this matter has 7 subparts (labeled a through g), and is almost one full page in length. The Examiner's comments in the Answer relate to three principal prior art references, and are only 6 paragraphs in total, and are completely lacking any sort of "feature by feature comparison" with the elements labeled a to g in the independent claim. Moreover, as noted in the Reply Brief, in the Answer the Examiner misquotes the language of the independent claim at issue claim in eight different places in the Answer (and in nearly as many different ways) in an ostensible attempt to mislead the Board and strengthen the case for rejection.

In conclusion, it is clear that after Applicants raised the issue, rather than complying with MPEP Section 1207.02 A (9), subparts (c) and (e), and filing a Supplemental Examiner's Answer setting forth the required comparison of claim and prior art, the Examiner instead chose to not return the matter to the Board and then misrepresent the status of this matter to the Undersigned repeatedly - thereby avoiding additional effort in writing a Supplemental Answer, and/or avoiding negative review. In the interests of expediting this long-delayed matter, Applicants request that the Examiner now be required to conduct that comparison in a Supplemental Answer; and in addition, be required to do so in a limited time frame. The purpose of MPEP Section 1207.02 A (9) is clearly to avoid having the Board waste time reviewing matters where the Examiner has failed to conduct a proper analysis in rejecting claims - as is the case here. In the alternative, Applicants request an expedited review of this matter by the Board.

The Board is thanked in advance for its consideration of this matter.

Respectfully submitted,

Dated: 1/12/05

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Applicants) hereby petitions for any extension of time or for any other grounds needed to make this submission timely and proper, and request that any fees be charged to Deposit Account No. 302088. I hereby certify that, on the date indicated below, this correspondence was sent by fax to the Commissioner for Patents, at 571 273 8300. It was also emailed to Michael.Fleming@uspto.gov, andrew.wang@uspto.gov, jessica.danabas@uspto.gov

By: SV

Date: 10/3/05

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